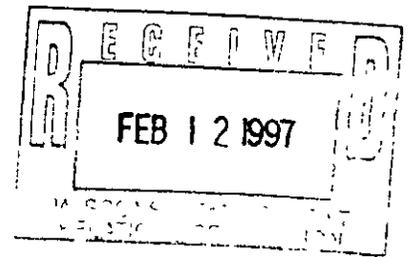


BEFORE THE ARBITRATOR



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In the Matter of the Arbitration Between

VERNON COUNTY HIGHWAY DEPARTMENT  
EMPLOYEES, LOCAL 1527  
AFSCME, AFL-CIO

and

VERNON COUNTY

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~~Case 139~~  
~~No. 49864~~  
~~Int/Arb 7027~~

Case 96  
No. 53711  
INT/ARB-7896  
Decision No. 28775-A

Appearances: Daniel R. Pfeifer for the Union  
Jerome Klos for the County

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On July 22, 1996, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between AFSCME, Local 1527, hereinafter referred to as the Union and Vernon County, hereinafter referred to as the County. A hearing was held on October 8, 1996 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the testimony, exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be included in the successor agreement. There are several items listed

in the respective final offers of the parties that are identical, and for which the parties stipulated to the terms. Those items are incorporated into this Decision. The following are the outstanding issues.

The UNION OFFER:

Wages

2% across the Board increase effective 1/01/96  
2% across the Board increase effective 7/01/96  
2% across the Board increase effective 1/01/97  
2% across the Board increase effective 7/01/97

Recycling Employees

Working Foreman-	Effective 1/1/96- An increase of \$.05/hr. Effective 1/1/97- An increase of \$.05/hr
Certified Operator	Effective 1/1/96- An increase of \$.10/hr Effective 1/1/97- An increase of \$.10/hr
Non-Certified Operator	Effective 1/1/96- An increase of \$.20/hr Effective 1/1/97- An increase of \$.20/hr

Holidays

Add to Art. V, Sec. 5.04

If Christmas Eve falls on a Friday, it shall be observed on the preceding Thursday. If Christmas Eve falls on a Sunday, it shall be observed on the preceding Friday.

THE COUNTY OFFER:

Wages:

2.5% across the board increase effective 1996 <sup>1</sup>  
2.5% across the board increase effective 1997

Holidays

Add to Art. V, Sec. 5.04

If Christmas Eve falls on Friday, it shall be observed on the preceding Thursday. If

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<sup>1</sup> The County in its brief refers to a 2.8% increase for 1996. The certified final offers, however, have a 2.5% increase. It is that figure that the arbitrator must use as it was the figure certified by the WERC.

Christmas Eve falls on Sunday, it shall be observed on preceding Friday.<sup>2</sup>

STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.70(4)(cm)7 provides that an arbitrator consider the following in reaching a decision:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on the expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

Section 7g then reads:

'Factor given greater weight'...The arbitrator shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

Section 7r sets forth the other factors an arbitrator must consider:

- a. The lawful authority of the Municipal Employer.
- b. Stipulations of the parties.

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<sup>2</sup> In reviewing the offers of the parties for this issue, the only differences are grammatical with the inclusion of prepositions in one, and without them in the other. In all other respects, the offers are identical. This provision, as a consequence, has no bearing on the evaluation of the parties respective proposals, and shall not be referenced again in the Discussion Section of this Decision.

- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees in the private employment in the same community and in comparable communities.
- g. The average consumer prices of goods and services commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### POSITION OF THE UNION

The County has not argued that there is any statutory or legislative limitation on the County. While this factor must be given the greatest weight, it is not in issue here.

The "greater weight" must be given to local economic conditions. The County is primarily agricultural. Property values and farm prices have increased in the County. This factor favors the position of the Union.

The wage increase sought costs the County 3% per year. The

COLA for 1995 was 3.1%. The County is only offering a 2.5% increase, which is below COLA.

The Union has proposed increases in increments that equal 4% each year, with a cost to the County of 3% each year. The County's wages are below those of the comparable communities. The split increase is an accepted method to be used to allow employees to "catch up" to the wages paid by the comparables.

The proposed increases for the Recycling employees are also necessary. The wages of these employees are well below those paid by other comparable communities. The cost of the proposal is not significant since there are only four employees effected. In addition, the cost of the increase should not be included when costing the Union's total package as this would be unfair to the other employees in the bargaining unit.

The overall compensation paid to the employees in the bargaining unit is less than that received by the employees in the comparable Counties. Sick Leave, holidays and vacation are all less in Vernon County.

There is only 1 other County bargaining unit that has settled its contract for 1996 and 1997. This one settlement does not set a pattern. Another AFSCME unit is still in negotiation, and the proposal of the Union for that unit is the same as is proposed here. In addition, the employees in that bargaining unit had received a greater "catch up" wage several years earlier, which had not been received by the employees of the Highway Department.

## POSITION OF THE COUNTY

Numerous arbitrators have found that the most important of the other factors to be considered in interest arbitration are the internal comparables. Another bargaining unit that is also represented by AFSCME agreed to the same wage increase that the County is offering to the employees in this bargaining unit. The burden is upon the Union to show that a different increase is justified in this case.

The County is traditionally on the lower end of the scale for the wages that it pays when compared with other Counties. The economic situation in the County justifies the difference. It has among the lowest per capita income of all of the Counties in the State of Wisconsin, yet residents have among the highest tax rate in the State. The County is predominantly rural. This fact explains why the economy compares as it does to other communities. The farms are smaller and it has a higher per centage of "Grade B" cows than do other Counties. Many of the comparable Counties suggested by the Union have a higher per capita income than does Vernon County and have a lower tax rate. Many Counties do not provide the longevity that is provided by the County.

The Union has attempted to compare the wages of employees in solid waste to the recycling employees here. The duties and skills of solid waste employees are greater than those that are required for the recycling employees. The wages paid to solid waste employees is immaterial to the issue presented here. Furthermore, the wages of the recycling employees were just set. These employees

were included in the bargaining unit for the first time during the last contract. Their wages were set at that time. None of the facts that were used to set those wages have changed. The wages should not be adjusted.

### DISCUSSION

The Statute requires an arbitrator to first consider whether there are any limitations on expenditures placed by the State or an agency of the State upon the municipal employer. There has been no indication by the parties, nor is the arbitrator aware of any such limitation on the County in this case. Consequently, the arbitrator has considered this factor and finds that it does affect the outcome of this case.

#### Comparable Communities

It is necessary to determine the appropriate comparable Counties before analyzing many of the other factors set forth in Sec 111.70. The economic conditions of Vernon County must be compared with the economic conditions of other counties in order to ascertain the true economic picture of Vernon. Does its economy reflect the overall economy of the other Counties, or is its situation unique? If the economy of the County is similar to that of the other comparable Counties, than the actions of those Counties carries more weight.

The Union proposes using the Counties of Crawford, Iowa, Jackson, Juneau, Monroe, Richland, Sauk and Trempealeau. The County pointed to a difference between several of the proposed Counties,

such as Trempealeau, Juneau and Monroe. They have a higher per capita. It does not propose any different Counties than those suggested by the Union.

The Union points out that two previous arbitrators used the comparables suggested by the Union, although one arbitrator did not include Sauk and the other did not include Jackson. Generally, arbitrators should follow the pattern established by preceding arbitrators and by the parties themselves. There is no compelling reason offered to vary from the prior history of the parties. There is nothing in the record to indicate that the differences that currently exist between the comparable Counties and Vernon changed since the time that those comparables were first used. The County has referred to some differences in the per capita of Vernon versus the per capita of Trempealeau, Juneau and Monroe. The record does not show that when the comparables were first selected that the relationship between the per capita of Vernon and the comparables was any different than the per capita relationship that presently exists. If there had been some dramatic change, than perhaps a change in comparables would have been warranted. Absent that showing, it would be error for this arbitrator to deviate from the past history. Consequently, I adopt those comparables here. I shall utilize the Counties of Crawford, Iowa, Jackson, Juneau, Monroe, Richland, Sauk and Trempealeau for all relevant purposes here.

#### The Economic Conditions in Vernon County

Subsection (g) requires the arbitrator to give greater weight to economic conditions of the employer. The property values for the

comparable communities increased an average of 7.37%. The increase in Vernon was 6.8%. On the other side of the coin, State shared revenues increased by 21.5% in Vernon compared to a 13.86% increase for the comparables. Dairy and grain prices have risen throughout the State. It is likely given the makeup of the herds in Vernon and the small size of their farms that this increase is less than the State average.<sup>3</sup> There is nothing in the record to demonstrate, however, that there has not been growth in the economy in Vernon. In fact, the increase in total assessed values would indicate some growth in the County.<sup>4</sup>

The County argues that the per capita ranking is lower and property tax assessment per \$1000 is higher in Vernon than the average in the State. It believes that this proves that its economic condition of Vernon is worse than that of other Counties. As was noted earlier, it is important in analyzing the data to ascertain whether the relative rankings have changed over the years. There is simply nothing in the record to indicate that it has. Where it is now, appears to be where it was before. Its economy seems to have always been worse. The record does not show that it is any more worse off than it has been. These economic

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<sup>3</sup> Vernon has by per centage a higher ratio of "Grade B" cows to "Grade A" cows than other areas of the State. The size of the farms is also lower than the average farm size in the State.

<sup>4</sup> The County did show that the population growth in Vernon was below the average, which would indicate that the economy may not have grown as rapidly as other Counties. However, some of the data provided is several years old, and does not reflect the situation that existed in 1996 and that is anticipated for 1997, the years covered by this agreement. The utility of those figures is, therefore, somewhat limited.

differences, however, have already been reflected in the wages paid employees in Vernon as compared to the wages of the comparable Counties. While its starting wage is in line with the average starting wage for each classification in other Counties, the maximum is clearly below the average and near the bottom. Since the magnitude of the disparity in the economy between Vernon and the comparables has not changed, there is no basis for this arbitrator to conclude that the economic conditions in Vernon requires the imposition of a wage increase of anything less than would otherwise be warranted by a review of the other factors set forth in the Statute. I find that this factor does not impact the end result.

#### Wage Increases in the External Communities

Seven of the nine comparable Counties have settled their contracts for 1996. Two of those agreements provide for the same wage breakdown as is proposed by the Union.<sup>5</sup> The other four counties that have settled their contracts averaged a 3.3% increase. Interestingly, the two Counties that adopted the same wage increase as that proposed by the Union, Iowa and Richland, had a smaller increase in total property value than did Vernon County. Richland's tax rate is greater than Vernon's, and its ranking among Counties for adjusted gross income is approximately the same.<sup>6</sup> Even

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<sup>5</sup> At this juncture, the arbitrator is only reviewing the across the board wage increase proposed. A discussion on the proposal for the recycling employees will be made separately.

<sup>6</sup> The arbitrator recognizes that there are also differences between these two Counties and Vernon. The per centage of farms and the size of the farms is certainly different. The overall economic picture, however, does not seem to reflect those differences. The overall economic situation of the three appear to be similar.

if the arbitrator excluded Sauk, Trempealeau, Monroe and Jackson, as suggested by the County, the average increase for the two other Counties, is greater than that offered by Vernon. Crawford settled for 3%. The other two Counties that settled for 1996 granted two increases of 2% during the year, although deferring the second increase until October 1. The County has offered a 2.5% increase. That is clearly less than those given to the employees in the comparable Counties. The Union's proposal for 1996 is in line with the increases granted by the comparables. This factor favors the Union's wage proposal for 1996.

It is much more difficult to ascertain the relative merits of the parties proposals vis-a-vis the comparables for 1997. Only two Counties have reached agreement for 1997. Iowa granted the same increase that it did for 1996, two 2% increases. Sauk granted a 3.75% increase. It had given a 4.25% increase in 1996. It is unfair to state that a pattern is established when there are so few comparables to use. It is true that both of the two that settled, settled for more than is offered by the County. The two increases are similar to the Union's proposal. Thus, to the extent that a pattern is established, that pattern favors the Union. Given the paucity of comparables, however, this factor cannot be given the weight that it would otherwise be accorded.

#### Internal Comparables

There is only one other bargaining unit that settled its 1996 and 1997 agreement. The Courthouse employees accepted the same increase the County is offering here. The Union argues that there

are differences in the history of bargaining between the two units that justify different increases here. It states that the Courthouse employees received a larger increase than the other bargaining units in Vernon several years ago to help them catchup to the wages that other Counties pay for similar jobs. This agreement, it notes, is catchup time for this bargaining unit. The County states that the agreement for the Courthouse employees sets the standard that should be adopted here. It believes that this factor is the most important factor that the arbitrator should consider.<sup>7</sup>

This arbitrator would feel more compelled to give this factor the weight urged by the County if the number of bargaining units that had agreed to this figure were greater than it is. I indicated earlier my reluctance to rely on the wage average of the comparables for 1997 because of the few Counties that had settled for that year. The same must be said here. It is true that the Courthouse employees, like the current bargaining unit employees, are represented by AFSCME. That fact, however, does not automatically mean that the same increase should be adopted here. There are other bargaining units, one of which is also represented by AFSCME, that have not accepted 2.5% for 1996 and 1997. In fact, only 1 of the four bargaining units in the County have agreed to the increase proposed by the Employer. For this reason, while I

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<sup>7</sup> This argument is not unlike the argument made by the County in prior interest arbitrations. In each of those cases, the arbitrator did not agree with the County that internal comparables should be the preeminent criteria used. It was a factor in the determination, but not the exclusive factor.

find that the internal comparables favors the County, like the previous interest arbitrators for the parties, I cannot accord this factor the weight that the County urges.

#### Cost of Living Increase

The Union suggests that the "nonmetropolitan" area increases are the ones that should be utilized here, since Vernon is a nonmetropolitan area. The increase in COLA for that group in 1996 was 3.1%. The County points out that in past years the County has granted wage increases in excess of COLA. It also notes that COLA includes Medical, which is already paid for by the County. This lowers the true COLA. In addition, it notes that there is a Federal proposal to lower COLA to what the government believes is a more realistic figure.

While it is true that there is a proposal to lower COLA, that has not yet occurred. Until it does, I must use the figures that are provided by the Federal Government. They have set COLA at just over 3%. I also do not believe it is appropriate to exclude medical costs from COLA. There is no evidence that increases in COLA were specifically attributable to increases in medical costs. The County has offered a 2.5% increase. This is clearly less than COLA. The Union seeks two 2% increases in 1996 and another two in 1997. While the actual cost to the County is 3% a year, the net result is that wages are 4% higher at the end of each year. That amount exceeds COLA. The arbitrator is faced with the dilemma that one sides offer is less than COLA, and the other sides offer is greater than COLA. This criteria, as a consequence, does not favor either party.

### Overall Compensation

The Union notes that the County does not grant as much vacation time, holidays or allow for sick leave cashouts to the same extent as do other Counties. The County counters that its longevity plan is greater than all but one of the comparables. Each side argues that this factor favors their position.

I find this factor to be of little assistance in this case. Most arbitrators agree that while overall compensation can be relevant for the setting of an initial wage, its utility is much less when discussing wage increases for existing wage scales. As Arbitrator Bernstein notes "the theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates."<sup>8</sup> The parties knew of these differences when they initially agreed to the wages. There is no basis to change that pattern now.

### Other Factors

The Union believes that it is necessary for the employees in this bargaining unit to catch up with wages paid to similar employees in other jurisdictions. The burden is upon the Union to show that circumstances require that this be done. If, for example, the relative position of these employees when compared to others has fallen over the years, a "catchup" might be warranted. Long term employees in this bargaining unit are paid less than many of the long term employees in the comparable jurisdictions. The

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<sup>8</sup> The Arbitration of wages, University of California Press, 1954, p.63-64.

question that must be answered is whether this circumstance has changed since the last agreement or agreements? There is nothing in the record to indicate that it has. It is true that the maximum wages paid to employees here are below the average maximum wages of the comparables. There is no reason to believe that this fact is new, or has gotten worse. As I indicated earlier, the economics in Vernon when compared to the economics of the other Counties explains that differential. I do not find that the record supports the Union's claim that it is now necessary for the employees to "catchup" to the employees in the comparable Counties. I find that this argument does not bolster the Union's proposal.

#### Recycling Employees

The Union seeks to increase the wages of the employees engaged in recycling beyond the across the board wage increases it seeks for the other employees in the bargaining unit. It compares the wages of these employees with the wages of employees working in solid waste. It argues that these wages are considerably lower. The County observes that the wages for these employees were just set in 1994. Since the parties set the appropriate wage at that time, a modification at this time is unwarranted. Further, it notes that the skills needed for recycling employees is not as great as the skills needed in solid waste.<sup>9</sup>

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<sup>9</sup> The duties of the various jobs were addressed by the parties in their exhibits and arguments. The County is correct that there are differences in the skill level of solid waste employees and those of recycling employees. The types of equipment that are operated by these employees is not as complex as is the equipment operated by solid waste employees.

There is clearly merit to the County's argument that a change in the structure is not warranted so soon after those wages were set. Presumably, the parties believed that the wages they were setting were correct. For the arbitrator to change that scale two years after it was agreed to would not be proper, absent some new circumstance being presented. The Union has not presented any new circumstance. The fact that these employees receive lower wages than solid waste employees was true in 1994. The County notes there is a rational basis for this difference. The Union acquiesced to the position of the County. A change in that rate by this arbitrator is not now justified. I find that the facts do not support the proposal of the Union for additional compensation for the recycling employees.

#### Conclusion

This is a very close case. There is justification for accepting each sides proposal. In evaluating the across the board wage increases proposed by the Union and the County, the two key factors are internal and external comparables. In each of the contracts of the comparables, the increases obtained by the employees of those Counties exceeded the offer of the County here. Vernon County is already at the low end of the scale. Accepting the County offer, would place these employees even further behind. The Union's proposal, on the other hand, would maintain the existing relationship between the County and the comparables.<sup>10</sup>

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<sup>10</sup> This is clearly much more true for 1996 than 1997, since so few Counties have settled for 1997. It is 1996 that the arbitrator really must use as a focal point for this analysis.

The above factor is offset, to some degree, by the fact that one of the internal comparables accepted the same wage increase proposed by the County. As I noted when first discussing this criteria, the fact that this wage increase has only been accepted by one of four bargaining unit, lessens the impact of this factor on this case. Balancing this factor against that for the externals, I conclude that the across the board wage proposal of the Union is the more acceptable offer. The externals simply outweigh the internals in this case.

The law requires the arbitrator to adopt the final proposal of one party in its entirety. I have already indicated that I do not find that the Union's proposal for the recycling employees is justified. Does the addition of this offer now tip the scales for the entire package towards the County?<sup>11</sup> Clearly, a vast majority of the cost to the County is incurred in the across the board increases. There are only four employees in Recycling. The exact costs of the various parts of the proposals has not been presented to the arbitrator by either party. Nevertheless, given the wage rates for the bargaining unit employees and the wage rates for the recycling employees, it is obvious that this particular portion of the proposal does not significantly add to the total cost of their proposal. Almost all of the bargaining unit members receive no benefit from this increase. While the addition of this proposal,

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<sup>11</sup> The Union argues that the cost of this proposal should not be included in the overall cost of its proposal. I do not agree. It is part of the total package costs, and must be considered when evaluating the proposals.

tips the scales closer to the County's proposal, it does not tip it enough. As noted, this is an extremely close call. This arbitrator has had to issue Awards that required him to pick the least offensive proposal. That is not the situation here. Both proposals have merit. It is the Unions's proposal that has slightly more merit.

AWARD

The Union's final proposal shall be incorporated into the parties 1996-97 collective bargaining agreement.

Dated: February 11, 1997

  
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Fredric R. Dichter,  
Arbitrator